EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 6 December 2006

at the request of the Hungarian Ministry of Finance
on a draft law amending Law LVIII of 2001 on Magyar Nemzeti Bank
and Law XI of 1987 on legislation

(CON/2006/55)

Introduction and legal basis

On 20 October 2006 the European Central Bank (ECB) received a request from the Hungarian Ministry of Finance for an opinion on a draft law amending Law LVIII of 2001 on Magyar Nemzeti Bank (hereinafter the 'MNB Law') and Law XI of 1987 on legislation (hereinafter the 'draft law').

The ECB has received two versions, 'A' and 'B', of the draft law attached to the consultation request. According to the Ministry of Finance, the Government has decided to submit only version 'A' of the draft law to the Parliament for adoption, once it has received the ECB's opinion. As a result, the ECB has examined version 'A' of the draft law and this version of the draft law is the basis for the ECB's opinion.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the second and third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1], as the draft law relates to means of payment and Magyar Nemzeti Bank (MNB). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft law

The draft law aims to:

(i) address some of the issues raised in the ECB's 2004 Convergence Report concerning Hungary and its legislation on MNB; and

(ii) amend the rules on banknotes, coins and imitations thereof, including certain new rights and obligations concerning the fight against counterfeiting; and

1 OJ L 189, 3.7.1998, p. 42.

(iii) update certain other provisions related to changes in the Hungarian financial market's arrangements.

2. General observations

2.1 The ECB welcomes the draft law, as it will improve the compatibility of Hungary's legislation with the Treaty and update the MNB Law in the light of certain changes in the Hungarian financial market.

2.2 According to the consultation request, the draft law 'strives to take into consideration fully the recommendations concerning MNB's institutional and personal independence in the Convergence Report of the European Commission and the European Central Bank in 2004'. The ECB would like to point out that although it is of crucial importance for Hungarian legislation to comply with the Treaty regarding a national central bank's institutional and personal independence, the ECB's 2004 Convergence Report highlighted several other issues that have not been addressed by the draft law, such as – with respect to the integration of the MNB into the Eurosystem – the failure to recognise the ECB's powers in the field of monetary policy or the ECB's exclusive right to authorise the issue of banknotes within the Community. The ECB also notes that the ECB 2006 Convergence Report is currently under preparation and would recommend that any future amendment to the MNB Law should take the ECB's 2006 Convergence Report's assessment into account.

2.3 In view of the fact that the MNB Law has been amended several times in the last few years, the ECB would also like to stress the importance of legal certainty. It is in this regard essential for fundamental legislation regulating the central bank to serve as clear and constant guidance, and overly frequent changes to the central bank legislation may compromise this function.

3. Specific observations

3.1 *MNB's independence*

3.1.1 Currently MNB is obliged to obtain the Ministry of Justice's opinion *ex ante* on MNB's basic tasks. The ECB's 2004 Convergence Report found that this obligation is incompatible with the Treaty's principle of central bank independence. Article 11(3) and Article 15 of the draft law deletes such obligation, stating that 'the opinion of the Minister of Justice does not need to be requested concerning the regulations issued by MNB's Governor'. The ECB welcomes this change, as it further strengthens MNB's institutional independence.

3.1.2 Concerning the personal independence of members of the Monetary Council and MNB officials, the ECB notes that Article 9(1) of the draft law deletes the reference to the intentional failure to submit a wealth declaration and the intentional disclosure of false data or information in the wealth declaration as a ground for dismissal in the case of the Governor and the Monetary Council members. In this regard, the ECB would like to emphasise that, although making the Governor, the

Deputy Governor and members of the Monetary Council, as well as members of the Supervisory Board subject to a requirement to submit a wealth declaration is in principle acceptable, the application of these provisions must take full account of Article 108 of the Treaty and 14.2 of the Statute of the European System of Central Banks and of the European Central Bank. Furthermore, with regard to the inability of a member of the Monetary Council to fulfil the conditions required for the performance of their duties as a ground for dismissal, the ECB is of the opinion that the distinction between reasons 'beyond their control' and 'within their control' in Article 49(10)(a) and (b) should be removed, since NCBs' statutes should not specify the grounds for dismissal beyond those laid down in Article 14.2 of the Statute.

3.2 *Banknotes, coins and imitations*

3.2.1 The ECB understands that the draft law does not prejudice the application of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting[2].

3.2.2 With respect to the legal integration of the MNB into the Eurosystem, the ECB recommends that Article 5 of the draft law, which aims to amend Article 31 of the MNB Law, should refer to Article 106 of the Treaty and Article 16 of the Statute.

3.2.3 The ECB also notes that the draft law seems to implement certain provisions of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[3] and Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins[4], which are directly applicable Community law. The concept of direct applicability signifies that regulations and other directly applicable rules of Community law are taken to be part of the national legal systems automatically without the need for separate national legal measures and, according to the Court of Justice of the European Communities, Member States should not pass any measure which purports to transform a Community regulation or any other directly applicable Community rules into national law[5].

3.3 *Other issues*

3.3.1 The ECB notes that in spelling the name of the single currency as 'euró', the draft law does not comply with the spelling rules for the word 'euro'. To make the euro's singleness apparent, Community law[6] requires a single spelling of the word 'euro' in the nominative singular case in all

2 OJ L 181, 4.7.2001, p. 6.

3 OJ L 139, 11.5.1998, p. 1.

4 OJ L 373, 21.12.2004, p. 1, extended to the non-participating Member States by Council Regulation (EC) No 2183/2004 of 6 December 2004 (OJ L 373, 21.12.2004, p. 7).

5 Case 34/73 *Variola* v *Amministrazione italiana della Finanze* [1973] ECR 981.

6 See Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ L 162, 19.6.1997, p. 1), Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1) and Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro (OJ L 359 31.12.1998, p. 1), all three of which were amended in 2000 for the introduction of the euro in Greece. See also the Community legislation on euro coins in 1998 and 1999, as well as Council Regulation (EC) No 2169/2005 of 21 December 2005 amending Regulation (EC) No 974/98 on the introduction of the euro (OJ L 346, 29.12.2005, p. 1).

Community and national legislative provisions. On the basis of these considerations, and in view of the Community's exclusive competence to determine the name of the single currency, any deviations from this rule are incompatible with the Treaty and should be corrected.

3.3.2 With respect to the legal integration of the MNB into the Eurosystem, Articles 1 and 11 of the draft law which will amend Article 10(1) of the MNB Law and Article 60(1)(c) of the MNB Law respectively, fail to recognise the ECB's powers under Article 19 of the Statute and therefore do not remove the incompatibility with Community law. To address such incompatibility, the ECB recommends that the above articles of the draft law refer to the ECB's powers as specified in Article 19 of the Statute.

3.3.3 The ECB suggests that Article 15 of the draft law should refer to the duty to consult with the ECB in its fields of competence pursuant to Article 105(4) of the Treaty and Article 4 of the Statute. Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[7] expressly requires Member States to take the measures necessary to ensure compliance with this obligation.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 6 December 2006.

[signed]

The Vice-President of the ECB

Lucas PAPADEMOS

7 OJ L 189, 3.7.1998, p. 42.